

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2297 of 1991

with

CIVIL APPLICATION No 950 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIPSING BHAVANSING CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

MS KUSUM M SHAH for Petitioner  
MR HL JANI for Respondent No. 1, 2  
MR JM BAROT for Respondent No. 3  
None present for Respondents No. 4, 5

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/11/97

ORAL JUDGEMENT

1. Challenge has been made by the petitioner to the order annexure 'D' of the respondent-State under which the notification dated 11th February, 1991 under which

the Gram Panchayat, Hasanpur Group Gram Panchayat was notified to be bifurcated in two Panchayats namely Hasanpur Group Gram Panchayat and Pedagada Group Gram Panchayat.

2. In this special civil application, after notice on 25th April, 1991 this Court has ordered as under:

"In spite of service of the notice, the State Government has failed to file an affidavit in reply pointing out that on what basis annexure 'B' was passed and on the fact of it, it seems to be without jurisdiction. Hence Rule.

The respondents are directed to act as per the bifurcation notification dated 18-2-1991. The respondents are further directed to implement it on or before 1-5-1991."

3. The notification of the Government date 11-2-1991 was published in the gazette notification dated 18th February, 1991 annexure 'B'. So this Court has directed the respondent to act as per the bifurcation notification dated 18th February, 1991. After this order, the respondent-State has issued another notification dated 30th April, 1991 under which the earlier notification dated 11-2-1991 published in the gazette on 18-2-1991 has been cancelled. The counsel for the petitioner states that a contempt petition has been filed after that order and ultimately the Government has given out before this Court that it will give effect to the bifurcation of the Gram Panchayat notification dated 11-2-1991 and that contempt petition has been withdrawn.

4. By this civil application No.950/91, the petitioner prayed for amendment of the special civil application and this subsequent order has been prayed to be quash and set aside. This civil application has been taken up for hearing today along with this special civil application. The petitioner is permitted to challenge the order dated 30th April, 1991.

5. From the notification dated 11th February, 1991 published in the gazette dated 18th February, 1991, it is clear the the bifurcation of the gram Panchayat aforesaid was notified after consultation with the Gram Panchayat concerned. From the subsequent notification dated 30th April, 1991, it transpires that the respondent passed the said notification only on the request made by the Sarpanch by his application dated 29th April, 1991. The Sarpanch is not the Gram Panchayat. I fail to see any

justification in the action of the respondent to cancel its earlier notification dated 11th February, 1991 only on the application of the Sarpanch when the earlier notification has been made with the consultation of the Gram Panchayat.

6. Only on this short ground, this writ petition deserves acceptance and accordingly it is allowed. The notification dated 30th April, 1991, copy of which is filed along with this civil application is quashed and set aside. Similarly, the order of the respondent-Government, annexure 'D' at page No.19 of the special civil application is also quashed and set aside. The special civil application and Rule stand disposed of in the aforesaid terms. The civil application also stand disposed of.

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zgs/-